IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7166 OF 2005

Datta Tatoba Kharat & Ors. .. Petitioners.

vs.

Balasaheb Bapu Kharat

& Ors. .. Respondents.

Mr. K.S. Patil for petitioners.

Mr. A.B. Vagyani for respondents nos. 1 to 3.

CORAM : S.U. KAMDAR, J.

DATE : 28th November, 2005.

P.C.:

. Rule. Returnable forthwith.

2. The order impugned herein is rejecting the application of the petitioner herein to take the written statement on record. The ground given by the petitioner is the medical ground that the person concerned was not medically fit and, therefore, the written statement could not be filed in time. This Court as well as the Apex Court have now held that there is ample power in the Court to extend time and period of 90 days is not mandatory. The contention

raised that there is no sufficient ground to condone the delay, in my opinion has to be considered in the light of the ground set out about the sickness. The petitioner has also produced necessary medical certificate. The learned counsel contends that even if medical certificate is taken into consideration, still no sufficient ground is made out for the purpose of extension of time to file the written statement. The suit is only of 2003 and in that light of the matter, I do not find any justification for refusing the defendant-petitioner to file the written statement. In the aforesaid circumstances, the order dated 1.8.2005 passed by the trial Court is set aside. The Civil Judge, Junior Division, Miraj is directed to take the written statement on record and proceed with the matter from that stage. The petition is made absolute accordingly. The petitioners are directed to pay costs quantified at Rs. 2500/- to the respondent herein.